ARIZONA SUPREME COURT
Committee on Civil Rules of Procedure in Limited Jurisdiction Courts
Minutes
April 20, 2011

Members present:

Hon. Paul Julien, Chair	Hon. Jill Davis
Hon. Timothy Dickerson	Hon. Maria Felix
Hon. Hugh Hegyi	Hon. Gerald Williams
Mary Blanco	Veronika Fabian
David Hameroff	Stanley Hammerman
Emily Johnston	Nathan Jones
William Klain	George McKay
David Rosenbaum	Anthony Young

Members not present:
Roger Wood

Guests:
Jerri Medina
Theresa Barrett

Staff: Mark Meltzer, Tama Reily, Julie Graber

1. Call to Order; introductions; approval of meeting minutes. The Chair called the meeting to order at 10:05 a.m. The Chair introduced Judge Hugh Hegyi and Ms. Veronika Fabian, new members of the Committee, and Ms. Julie Graber, new Committee staff.

The March 31, 2011 meeting minutes were then reviewed.

> **Motion:** A motion was made to approve the March 31, 2011 meeting minutes. The motion was seconded. The motion carried unanimously. **RCiP.LJC 11-005**

After approval of the minutes, the members revisited their charge. The Chair identified a correlation table contained within the Arizona Rules of Family Law Procedure at page 949 of the 2011 volume of the Arizona Rules of Court. This table assists in tying the new family rules to former rules in the Arizona Rules of Civil Procedure. The Chair suggested that a similar table might be useful for any revised rules that may be recommended by this Committee. The Chair added that some communities served by justice court precincts don't have legal aid offices that can provide advice to self-represented litigants, and the court rules may be a primary source of information for these individuals. Members then offered the following comments:

- Rewriting the civil rules for LJ courts in "plain English" would be beneficial, but other changes that would make the administration of justice in LJ courts more effective should also be considered.

- Rewriting the rules in simpler language does not necessarily require reducing the substance of the rules. Requiring notices to an opposing party at crucial steps of a lawsuit would be effective in informing self-represented individuals of their responsibilities during the litigation process.

- Rules may not be read by self-represented litigants even if the rules are simplified by this Committee. What self-represented litigants need most is basic information on a single page or in very few pages. A good handbook or checklists might be also useful for these litigants. A few courts have developed helpful web pages.

- A small amount of money might mean a lot for litigants in LJ courts. Procedural due process, including notice and an opportunity to be heard, should be an objective of the rules. The rules should provide reasonable limits on the time and expense of litigation.

- The rules of civil procedure are inherently fair, but they may not be used fairly. Unfairness concerns both sides of a case. Self-represented litigants, for example, don't always provide a copy of their answer to the plaintiff, causing a plaintiff uncertainty about the status of a case or causing a plaintiff to incur additional costs for obtaining a copy of the answer from the court clerk.

- Any solutions recommended by this Committee should promote the parties' understanding of the rules as well as uniform application of the rules by justice courts throughout the state. Certain statutes must also be taken into consideration in drafting new rules. For example, although A.R.S. § 22-215 allows oral pleadings, the rules of procedure and Rule 10 in particular appear to require that pleadings be written.

- The process adopted by RCiP.LJC workgroups of going through each rule and each subsection of every rule will help to address questions under A.R.S. § 22-211 about which superior court rules do or don't apply in LJ courts. However, the process of reviewing each rule and subsection of every rule is time consuming, and it may be necessary in the future to ask the Court for additional time that would allow the Committee to complete its work.

2. Presentation from workgroup #2. The Chair invited Judge Davis and the members of workgroup #2 to discuss their suggestions. Judge Davis referred the Committee members to written materials that had been prepared by the workgroup and staff. These materials contained the language of each existing rule and every subsection of each rule assigned to them; a recommendation in a table format about whether the rule or subsection should apply as written, or whether it should apply as rewritten, should be incorporated by reference, or did not apply; and if the recommendation was to rewrite a rule, the materials provided by the workgroup included draft language for the proposed rule. The Committee then discussed the following rules presented by the workgroup:

Section III: Pleadings and motions; pretrial procedures

Rule 7.1: motions. The workgroup recommended that consideration of this rule be deferred pending a discussion of other rules on motions (such as Rules 56, 59, and 60). The Committee concurred with this recommendation.

Rule 7.2: motions *in limine*. The workgroup recommended that this rule be rewritten, and that it be included with Section VI of the rules concerning trial. The suggested title of this proposed new rule 47 was changed to "pretrial motions regarding evidence". Following discussion by the Committee, the word "jury" was deleted from subsection (b) of this proposed rule so that it could apply to bench trials as well as to jury trials.

Rule 16: pretrial conferences; scheduling; management. The workgroup recommended that this rule be rewritten under a shortened title of "pretrial conferences".

- Proposed subsection (g) of this rule, which is new, is entitled "special rule for collection cases." It was intended to address the large volume of collection cases that are filed, and to provide defendants in those cases at or prior to pretrial conferences with information that would permit them to understand the nature and origin of the alleged debt.

  Members expressed concern that the collection industry was being singled out by this proposed provision. Concerns were also expressed that because some courts set pretrial conferences shortly after an answer was filed, plaintiffs' counsel may not yet have received the appropriate documentation of the debt from their clients. Other members believed that the merits of a case couldn't be assessed at a pretrial conference without these documents; and that providing these items at or before the pretrial would be beneficial for both sides and would allow the court to conduct a meaningful pretrial, especially because many courts set only one pretrial conference during a case. Some courts refer cases to mediation prior to conducting a pretrial conference.

  It was noted that this proposed provision concerns a disclosure obligation, and that it would be more appropriate to include this concept within Rule 26.1. The members agreed on this point. They also agreed that a time frame for providing these documents to a defendant should be included in a Rule 26.1 provision.

- A provision in the revised Rule 16 providing that the court may sanction a party for failing to comply with a discovery requirement, or for failing to appear at a pretrial conference, was modified by the members by deleting the portion about failing to comply with discovery.

- Proposed paragraphs dealing with "settlement" and "settlement conference" were consolidated by the Committee. The Committee declined to include a provision that the parties should only be allowed to discuss settlement in the presence of a third party

neutral; the draft rule therefore provides that judges may discuss settlement with the parties, or the parties may be given an opportunity to discuss settlement themselves.

Rule 16.1: settlement conferences. The Committee agreed with the workgroup's recommendation that this existing rule is unduly detailed for LJ cases, and that the settlement provisions in proposed Rule 16 are sufficient.

Rule 16.2: good faith settlement conferences. Although this rule may not have frequent application in justice court cases, the members concurred with the workgroup's suggestion that the rule be applied by reference, as indicated in proposed Rule 16.2.

Rule 16.3: initial case management conferences in cases assigned to the complex civil litigation program. The Committee members agreed that this rule is exclusively for cases in the superior court and it does not apply in LJ courts.

Section IV: Depositions and discovery

Rules 26(a) and 26(b): discovery methods, and discovery scope and limits. Staff noted that the proposed draft reversed the order of these two subsections, so that discovery scope would precede discovery methods. A provision in the proposed rule regarding non-parties at fault was inadvertently omitted and will be added in the next draft. The Committee agreed that the word "party" should be substituted for "counsel" in a provision regarding discovery motions.

A suggestion was made during the Committee's discussion that these paragraphs should include an explanation of what the term "discovery" means. A member believed that discovery should be allowed only by court order following a motion to permit discovery, although the threshold requirement to allow discovery should be a low one. The majority of members felt that discovery should be allowed without the need for a court order; that requiring a court order might raise due process issues; and that requiring a motion might precipitate an increased workflow and a lack of uniform practices in justice courts.

Rule 36: requests for admissions. The members then focused on requests for admissions ("RFA's") under Rule 36. The core issue was the rule's self-executing sanction that requests are deemed admitted if not timely denied. On the one hand, it was felt that requests to admit and the attendant consequence of deeming matters admitted if not denied are used in practice to deprive parties of their day in court. On the other hand, RFA's were considered to be effective tools for narrowing the issues. One member commented that it was the responsibility of a party who was served with RFA's to participate in the litigation process rather than ignoring the litigation. It was also noted that the "deemed admitted" provision was not truly a sanction, because there was no consequence if a party did what it was otherwise obligated to do under the discovery rules: respond with a timely denial.

The Committee discussed options to mitigate rather than eliminate the self-executing feature of Rule 36. Among the options were:

1) Providing a bold and clear warning upon service of an RFA about the consequences of a failure to timely deny or to respond to the RFA's;

2) Allowing a "grace" or "cure" period to respond, similar to the notice requirement for a default under Rule 55;

3) Requiring the propounding party to file a motion with the court requesting that the matters be deemed admitted

The prevailing view during the discussions was that the intent of A.O. 2011-13 was not to abolish the consequences of discovery violations, but rather to make those consequences clear and comprehensible. The members unanimously felt that providing a bold and clear explanation of the consequences of failing to timely respond was appropriate. Most members further felt that a grace period should also be added to the rule, but that court action to deem the requests admitted should not be required.

Rule 26.1: prompt disclosure of information. In the course of discussing this proposed rule, Committee members advised that in some counties, the parties are advised by the court of the need to exchange disclosure statements, but that this is not done statewide. A provision should be included in the draft rules to heighten awareness of the disclosure requirements. A proposed provision regarding disclosure of "legal authority" was modified by the Committee to instead require disclosure of a "legal theory". A provision requiring a party to disclose and to provide copies of relevant documents that were known to exist was also modified by the members to require the party to instead disclose a list of those documents "whether favorable or not, and their location if known."

Rule 26.2: exchange of records and discovery limitations in medical malpractice cases. This case type was with very rare exceptions felt to be non-existent in justice court cases, and the rule was therefore not included in the draft of proposed rules.

Rule 27: depositions before action or pending appeal. This rule was believed by the members to be applicable only in the superior court, and it too was not included in the proposed draft.

Rule 28: persons before whom depositions may be taken. The members favored keeping this rule in the proposed draft with modifications suggested by the workgroup that simplify the rule.

Rule 29: stipulations regarding discovery practice. Notwithstanding a recommendation of the workgroup that this rule was unnecessary, after discussion by the members the rule was thought to have value and it should be included in the draft. Staff will rewrite a proposed Rule 29.

3. Next steps. Workgroup #2 will continue its presentation at the next meeting, and if time permits, workgroup #1's recommendations will be revisited. Workgroup #3 will present at the August 11 meeting.

4. Call to the Public; Adjourn. There was no response to a call to the public. The meeting was adjourned at 3:07 p.m.

The next meeting date is **Thursday, June 9, 2011.**